

**Complaint Investigation Report**  
**Parent & Parent v. M.S.A.D. #71**  
February 19, 2008

Complaint # 08.045C  
Complaint Investigator: David Webb  
Date of Appointment: November 8, 2007

**I. Identifying Information**

Complainants: Parent and Parent

Respondent: Thomas Farrell, Superintendent  
87 Fletcher Street  
Kennebunk, ME 04043

Susan Mulsow, Special Education Director

Student: Student  
DOB xx/xx/xxxx

**II. Summary of Complaint Investigation Activities**

On November 7, 2007, the Maine Department of Education received this complaint. The complaint investigator was appointed on November 8, 2007. The complaint investigator received 13 pages of documents from the respondents and 8 pages of documents from the parents. Interviews were conducted with the following people: Parent; Susan Mulsow, Director of Special Services, M.S.A.D. #71; Cindy Thomson, Special Education Teacher, M.S.A.D. #71; and, Susan Cressey, Teacher, M.S.A.D. #71.

The Parents declined to participate in mediation and requested that this matter move forward on the complaint investigation. An exceptional circumstance arose during the complaint investigation process which necessitated the instigation of an ancillary issue process and required an extension of the timeline of the complaint investigation.

**III. Preliminary Statement**

The Student is xx years old and currently attends the Kennebunk High School in MSAD #71 ("District") as a xx grader. He has a diagnosis for ADD, Anxiety Disorder and Dysthymia, and receives special education services under the exceptionality of OHI. This complaint was filed by the Student's parents ("Parent" or "Parents") alleging that the District violated the Maine Unified Special Education Regulations ("MUSER") as set forth below.

### III. Allegations

1. Failure of the District to provide the Parents in advance of the November 6, 2008 IEP Team meeting reasonable notice of its policy requiring the Director of Special Education to be present whenever a parent attends an IEP Team Meeting with an advocate, in violation of MUSER §VI.2.B., 20 USC 1414(d)(1)(B) and 34 CFR 300.321(a).<sup>1</sup>

#### Ancillary Issue

Unauthorized modification and distribution by the District of an Advance Written Notice of IEP Team Meeting form dated November 16, 2007, in violation of MUSER § I and Commissioner Gendron's August 24, 2007 Informational Letter: 13, Policy Code: IHBA/CH

### IV. Summary of Findings

1. The Student is xx years old and currently attends Kennebunk High School as a xx grader. He has a diagnosis for ADD, Anxiety Disorder and Dysthmia, and receives special education services under the exceptionality of OHI.
2. An IEP developed on March 15, 2007 determined that the Student would receive the following Special Education and Supportive Services:
  - a) 11 hours weekly of Direct Instruction,
  - b) One hour weekly of Social Work services, and
  - c) 15 minutes monthly Occupational Therapy consultation services.
3. On October 30, 2007, the District sent an Advance Written Notice of IEP Team Meeting ("Advance Written Notice") to the Parents notifying them of an IEP meeting scheduled for November 6, 2007. The notice stated that the purpose of the IEP meeting was for reviewing the Student's program and "Post Secondary Goals and Transition Services."
4. The October 30, 2007 Advance Written Notice listed the names of the following participants invited to the IEP team meeting: the Parents and the Student; Susan Cressey, Administrator; Cindy Thomson, Special Education Teacher; Greg Hesse-Stromberg, Social Worker; and the following Regular Education teachers: Mary Grady-Hebert, Mike O'Brien, Noah Phillips, Betty Stuart and Richard Folsom. The notice also stated: "Additional participants who have knowledge or special

---

<sup>1</sup> The factual assertions in Allegation 1 have been modified from the allegations in the November 16, 2007 Allegations letter to reflect the specific factual circumstances discovered during the course of the investigation. The alleged regulatory violations are the same as set forth in the November 16, 2007 Allegations letter, including MUSER §VI.2.B, 20 USC 1414(d)(1)(B) and 34 CFR 300.321(a).

expertise regarding the child may be invited at the discretion of the parents or the agency.”

5. Prior to the November 6, 2007 IEP team meeting, the parents hired two special education consultants, Beth Crowell and Lou McIntosh, to attend the November 6, 2007 IEP team meeting with them. The Parents did not provide advance notice to the District that these individuals would be attending this IEP team meeting.
6. In an interview with the complaint investigator, the Parents reported that at no time did the District notify them that they had to provide advance notice to the District if they chose to bring other individuals to an IEP team meeting.
7. The Parents reported that upon their arrival for the November 6, 2007 IEP team meeting, they were informed by two school employees, Cindy Thomson and Susan Cressey, that due to the presence of the Parents’ advocates, the IEP team meeting would need to be cancelled. The Parents reported that Ms. Cressey and Ms. Thomson said that it was the District’s policy to have the Director of Special Education present whenever advocates were present at IEP team meetings, and that the Director was not available for this meeting.
8. In an interview with the complaint investigator, Cindy Thomson, a Special Education Teacher who has worked with the Student for almost two years, said that the Parents’ had not invited advocates to any previous IEP team meetings. She said that it is the practice of the District to have the Special Education Director present as a team member when parents bring advocates. She said she is not aware of any written District policy regarding the cancellation or postponement of meetings if parents bring advocates or other individuals to IEP team meetings.
9. Ms. Thomson also reported that when the parents arrived with their advocates to the November 6, 2007 IEP meeting, she advised them of the District policy to have the Special Education Director present whenever advocates attend IEP team meetings. She also advised the Parents at that time that since the Director was not available, the meeting would need to be postponed. Ms. Thomson said that the Parents were visibly upset, and suggested to her that the District “try to call the Director” to get her permission to hold the meeting. Ms. Thomson said that she informed the Parents that the Director was not available by phone.

10. Ms. Thomson also reported that neither the Parents nor the advocates were asked at or before the November 6, 2007 IEP meeting whether they planned to raise any additional issues at the meeting.
11. In an interview with the complaint investigator, Susan Cressey, a Teacher and part-time Administrator for the District, stated that she was present at the November 6, 2007 IEP meeting. She said that she was also involved with the planning of this meeting, which she understood to be primarily to address the Student's "catching-up" on his work in light of his frequent absences from school. Ms. Cressey said that she was told by Cindy Thomson that if the parents came with advocates that the meeting should be postponed until the District's Director of Special Education could be present at the meeting. She said that because of the presence of the advocates, the District was concerned that other, more complicated issues would be involved, which would require the presence of the Director of Special Education.
12. Ms. Cressey also reported that she does not normally receive advance notice of the "possibility" of a parent bringing an advocate, which suggested to her that the District may have known that the parents would bring an advocate. She said that she was not sure of the actual issues that the Parents planned to bring up at the IEP, and there was no discussion of IEP issues when the Parents arrived with their advocates on November 6. Ms. Cressey did not know if the District contacted the parents prior to the meeting to see if they were planning to bring an advocate. She likewise was not sure if the District asked the Parents to notify them in the event they planned to bring an advocate or other individual to the IEP team meeting.
13. In an interview with the complaint investigator, Susan Mulsow, the District's Director of Special Education, stated that she had not planned to be at the IEP meeting scheduled for November 6<sup>th</sup>. She said that it is the practice of the District to have the Special Education Director present as a team member when parents bring advocates to IEP team meetings. She stated that when parents bring advocates to meetings, it is usually an indication of a more serious parental concern or a more complex issue that would require her presence.
14. Ms. Mulsow also reported that she did not have advance notice that the parents had any concerns about the programming for the Student. She said that, in fact, the District had called the meeting in order to go over the Student's programming as he had just entered High School. She also said that she had received no information from the Student's teachers or other staff that the Parents were in any way dissatisfied with the Student's placement or programming at the school.

15. Ms. Mulsow said that the District does not have any written policy requiring parents to provide advance notice to the District if they choose to bring an advocate to an IEP team meeting. She said that in all other instances, however, parent advocates or attorneys have notified the District of their participation prior to the IEP team meeting. She also said that as a result of being surprised at this meeting, she has modified the District's "Advance Written Notice of IEP Team Meeting" form to require parents to provide at least one day advance notice to the District if they plan to bring additional participants who were not listed on the original notice.
16. On November 16, 2007, the District sent an Advance Written Notice of IEP Meeting to the Parents notifying them of a November 26, 2007 IEP meeting. The notice stated that the purpose of the IEP meeting was for reviewing the Student's program and also stated: "If you, as the parent... would like to bring additional participants who are not listed on this invitation, please contact the District Special Education office...at least 1 (one) school day prior to this meeting."

## V. Conclusions

**Allegation # 1:** Failure of the District to provide the Parents in advance of the November 6, 2008 IEP Team meeting reasonable notice of its policy requiring the Director of Special Education to be present whenever a parent attends an IEP Team Meeting with an advocate, in violation of MUSER §VI.2.B., 20 USC 1414(d)(1)(B) and 34 CFR 300.321(a).

### **PROCEDURAL VIOLATIONS FOUND**

Pursuant to MUSER §VI.2.B<sup>2</sup>, each IEP Team shall include the following members:

- (1) The child's parents;
- (2) No less than one regular education teacher for the child which should include vocational or adult education teachers, if appropriate (if the child is, or may be, participating in the regular education environment);
- (3) No less than one special education teacher or, where appropriate, not less than one special education provider (licensed or certified special education provider);
- (4) A representative of the school administrative unit who

---

<sup>2</sup> See also, Part B of the IDEA, 20 USC 1414(d)(1)(B) et. seq., and its implementing regulations at 34 CFR Part 300.

- (a) Is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities;
  - (b) Is knowledgeable about the general education curriculum;
  - (c) Is knowledgeable about the availability of resources of the local educational agency and has written authorization to obligate the unit ; and
- (5) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate;
  - (6) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (2) through (5);
  - (7) Whenever applicable, the child; and
  - (8) For a child who is a state ward or state agency client, the child's caseworker representing a youth serving state agency. The surrogate parent retains the sole authority to represent the child by exercising the procedural safeguards available under this rule.

The determination of knowledge or special expertise of an individual described in (B)(5) above shall be made by the party (parent or public agency) who invited the individual to be a member of the IEP Team.

MUSER §VI.2.B(5) is clear that parents and public agencies may, at their discretion, bring other individuals to IEP team meetings who have knowledge or special expertise regarding the child. Additionally, MUSER §VI.2.B.(8) specifies that the determination of knowledge or special expertise of an individual described in B (5) shall be made *by the party* (parent or public agency) who invites the individual to be a member of the IEP Team. (emphasis added). Additionally, MUSER does not obligate parents to provide advance notice if they intend to invite of any other individuals to IEP team meetings.<sup>3</sup>

---

<sup>3</sup> MUSER §VI.2.B.(5) places no requirement on parents to provide advance notice to SAU's if they choose to have other individuals attend their child's IEP Team meeting. In other contexts, the MUSER requires parties to provide advance notice of meeting participants. MUSER §VI.2.A obligates a district to provide parents notice of who will be in attendance at IEP Team Meetings. In addition, attorneys representing a parent shall provide the superintendent of the school administrative unit with "at least 7 days written notice

The provisions of the IDEA addressing the issue of a parent's right to bring other individuals to IEP team meetings has been interpreted to include lay advocates. In Letter to Serwecki, 44 IDELR 8 (February 28, 2005), the Massachusetts Office of Special Education Programs held:

[N]othing in the regulations prohibited a parent's advocate from attending an IEP meeting whether or not the parent attended as well...under 34 CFR 300.344(a)(6), either the parent or the public agency, at their discretion, may invite other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate, to be members of the child's IEP team...[and] the determination of whether an individual has knowledge or special expertise regarding the child is made by the parent or public agency inviting the individual to be a member of the IEP team. We find nothing in Part B that would require that a parent be present at the IEP meeting in order to have a person that the parent determines has special knowledge or expertise regarding the child at the meeting as a member of the IEP team.

While MUSER section §VI.2.B.(5) allows “discretionary” participants at IEP team meetings, MUSER section §VI.2.B.(4) *requires* districts to provide qualified individuals at all IEP team meetings.<sup>4</sup> Districts, however, may use their reasonable discretion in the selection of who will attend the IEP team meeting as their representative. *See Clyde K. ex rel. Ryan K. v. Puyallup Sch. Dist.*, 21 IDELR 664 (9th Cir. 1994). In Bray v. Hobart City School Corp., 19 IDELR 1011 (N.D. Ind. 1993), the court addressed the issue of a district's discretion to provide qualified individuals at IEP Team meetings:

The representative of the public agency could be any member of the school staff, other than the child's teacher who is qualified to provide, or supervise the provision of specially designed instruction to meet the unique needs of handicapped children. . . Each State or local agency may determine which specific staff member will serve as the agency representative. However, the representative should be able to ensure that whatever services are set out in the IEP will actually be provided and that the IEP will not be vetoed at a higher administrative level within the agency.

---

*prior to the mediation* that they will be representing the parent at the mediation.” *See* MUSER §XVI.3.B.(8) (emphasis added).

<sup>4</sup> MUSER §VI.2.B.4, provides, in relevant part, that IEP team meetings must include a representative of the school administrative unit who:

- (a) Is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities;
- (b) Is knowledgeable about the general education curriculum; and
- (c) Is knowledgeable about the availability of resources of the local educational agency and has written authorization to obligate the unit ...

Thus, the person selected should have the authority to commit agency resources. . . .

It follows that districts should have discretion to change their IEP team representative in the event that a parent chooses to bring an advocate or another individual to an IEP team meeting. Furthermore, advocates, like attorneys, might change the dynamic of the meeting,<sup>5</sup> and may raise additional issues that require a level of expertise that can only be met by senior administrative staff, such as the Director of Special Education. In order for districts to properly staff and prepare for an IEP meeting, the district may require parents to provide reasonable advance notice if they intend to bring advocates or other individuals to IEP Team meetings.

In the present case, prior to the November 6, 2007 IEP team meeting the District did not notify the Parents of its policy about having the Director of Special Education attend IEP Team meetings whenever an advocate is in attendance. Rather, the District merely provided an Advance Written Notice to the parents stating that the Parents can bring, at their discretion, “other participants who have knowledge or special expertise regarding the child.” It was only after the parents arrived with their advocates at the IEP team meeting that they were told about the district’s policy.<sup>6</sup>

In Monroe County School District, 352 IDELR 168A (352 LRP 8318) (Alabama, 1985), a case similar to the present case, school officials requested that a parent's guest leave a scheduled IEP meeting because the parents had failed to notify the school of the guest’s attendance prior to the meeting. The district alleged that the parents violated a "courtesy" standard set by the school to be informed in advance of all meeting participants. The Hearing Officer disagreed, noting that this courtesy standard had not been communicated to the parents. The Hearing Officer specifically noted that “nothing in the school’s IEP procedures stated that parents or guardians must notify school officials in advance if they intend to bring other people or guests.”

In the instant case, it is similarly inappropriate for the District to subject these Parents to a policy that has not been disclosed to them. Specifically, the District’s failure to share their policy with the Parents in this instance resulted in additional expense for the parents and an inconvenience for all of the participants who showed up at the meeting on November 6, 2007. While the District ultimately has not denied the Parents an opportunity to conduct future IEP team meetings with their advocates, the impact of the District’s failure to disclose this policy resulted in a procedural violation of MUSER §VI.2.B.

---

<sup>5</sup> The issue of additional IEP participants creating an adversarial atmosphere was addressed in the context of attorneys attending IEP meetings in *Letter to Diehl* 22 IDELR 734, (1995). In this case, the U.S. Department of Education Office of Special Education Programs noted that while the issue of the potentially “adversarial atmosphere” that could result when attorneys attend IEP meetings, “nothing in the regulations prohibits...including the attorney in the IEP meeting.”

<sup>6</sup>Susan Mulsow said that the District does not have any written policy requiring parents to provide advance notice to the District if they choose to bring an advocate to an IEP team meeting.



## Ancillary Issue

1. Unauthorized modification and distribution by the District of an Advance Written Notice of IEP Meeting form dated November 16, 2007, in violation of MUSER § I and Commissioner Gendron's August 24, 2007 Informational Letter: 13, Policy Code: IHBA/CH. **PROCEDURAL VIOLATION FOUND**

MUSER § I provides, in relevant part, as follows:

Every school administrative unit, intermediate educational unit, public school, or other public agency that receives federal or State funds to provide early intervention or free appropriate public education services to children age birth to twenty with disabilities *must utilize the Department's required forms*. An administrative letter will be sent on a yearly basis which will include links to the required forms. (emphasis added)

On August 24, 2007 Commissioner Gendron sent an Informational Letter (13, Policy Code: IHBA/CH) to all Superintendents, Special Education Directors and CDS Regional Site Directors regarding additional required state forms for special education. This letter announced the Department's development of two additional special education forms required in all School Administrative Units (SAUs) beginning October 1, 2007. The new forms included an Advance Written Notice of IEP/IFSP Team Meeting, and provided specifically that "*these are standardized documents and must be used as they are and cannot be modified per individual choice.*" (emphasis added)

On November 16, 2007, the District sent an Advance Written Notice of IEP Meeting to the Parents notifying them of a November 26, 2007 IEP meeting<sup>7</sup>. While the District may request information from parents prior to IEP Team meetings, this notice violated MUSER § I and the Commissioner's August 24, 2007 Informational Letter by adding the following language to the form: "If you, as the parent... would like to bring additional participants who are not listed on this invitation, please contact the District Special Education office...at least 1 (one) school day prior to this meeting."

## VI. Corrective Action Plan (CAP)

---

<sup>7</sup>The October 30, 2007 Advance Written Notice listed the participants and stated that the purpose of the IEP meeting was for reviewing the Student's program and "Post Secondary Goals and Transition Services."

1. The District shall formulate a clear, written policy regarding the request that parents or guardians provide advance notification to the District if they plan to bring additional participants to any IEP team meeting. This policy shall not reduce the parents' rights to participate in an IEP Team meeting in any manner under MUSER or Part B of the IDEA.
2. The District shall send notice of this policy to all parents of students receiving Special Education Services within the District, as well as parents of student's currently in the referral process. Written notice of this policy must also be included in the same manner as would be provided for any other special education policy. A copy of the policy and a copy of the cover letter or memorandum that accompanies it (it should indicate to what population the policy has been sent) shall be sent to the Parents, the Due Process Office and the complaint investigator.
3. The District shall reimburse the Parents for any costs and expenses incurred as a result of the advocates' attendance at the November 6, 2007 IEP team meeting. Such costs shall not include any preparation time, and shall include only the time and expenses incurred by the advocates and the Parents in connection with the advocates' attendance at said meeting. In order to be reimbursed, the Parents must send a detailed invoice of said costs to the District, with a copy of said invoice submitted to the Due Process Office and the complaint investigator.
4. The District shall discontinue the practice of modifying any required state forms for special education, and shall submit a memorandum of certification of discontinuance of this practice to the Due Process Office, the Parents and the Complaint Investigator.